Supreme Court, U.S.
FILED
JUN 23 2000
CLERK

(2)

Docket No.: 99-1890

SUPREME COURT OF THE UNITED STATES

WISMANN LUDGER, *et al.*, Petitioners

vs.

HELM AG and VOS BV, Respondents

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

---

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

RONALD O. ARMBRUST
JEFFREY B. SHAPIRO
Counsel of Record for Respondents
HERZFELD & RUBIN
Suite 1501, 801 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 381-7999
Facsimile: (305) 381-8203

43pp

QUESTION PRESENTED FOR REVIEW

Whether the Eleventh Circuit Court of Appeals erred in affirming the district court's dismissal of this action for want of federal jurisdiction under the Alien Tort Claims Act, 28 U.S.C. § 1350.

LIST OF PARTIES TO THE PROCEEDING

AND RULE 29 LIST

1. ALINE ALEXANDRE, as Personal Representative of the Estate of Stanley Mardy (deceased)
2. CHARLITOT "CHARLIE" ALEXIS, as Personal Representative of the Estate of David Alexis (deceased)
3. HUBERT ALEXIS, as Personal Representative of the Estate of Therbuh Alexis (deceased)
4. EDDY BENJAMIN, as Personal Representative of the Estate of Benjamin Peterson (deceased)
5. MOREL BERARD, as Personal Representative of the Estate of Rose-Cathie Berard (deceased)
6. YANICK BLAISE, as Personal Representative of the Estate of Albert Patrice (deceased)

7. SYLVESTER CADET, as Personal Representative of the Estate of Mithsou Cadet (deceased); and as natural parent and guardian of Spady Cadet, a minor

8. LUC CENAT, as Personal Representative of the Estate of Cherlot Cenat (deceased)

9. ROOSEVELT CENATUS, as Personal Representative of the Estate of Louvenice Cenatus (deceased)

10. JACQUELINE CHARLES, as Personal Representative of the Estate of Claire Sarllah Charles-Francois (deceased)

11. MARIE ELINE CLERMOND, as Personal Representative of the Estate of Claurens Clermond (deceased)

12. JOSEPH EMMANUEL CLERVIL, as Personal Representative of the Estate of Westingueire Clervil (deceased)
13. JEAN FITO DANIEL, as Personal Representative of the Estate of Sabine Daniel (deceased)
14. LEONIE DERIVEAU, as natural parent and guardian of Kesnia Thama Gracia, a minor
15. MARIE DEPHOSE DORCELUS, as Personal Representative of the Estate of Naomie Dorcelus (deceased)
16. SAMUEL DOUCE, as Personal Representative of the Estate of Wildor Douce (deceased)
17. MARIE EDME, as natural parent and guardian of Antonioni Philibert, a minor
18. JEAN CLAUDE GEDEON, as Personal Representative of the Estate of Godson Gedeon (deceased)

19. ROGER GERARD, as Personal Representative of the Estate of Falonne Gerard (deceased)
20. LOUIS KESNEL GRACIA, as natural parent and guardian of Kesnia Thama Gracia, a minor
21. MICHIELTNE GREGOIRE, as Personal Representative of the Estate of Farah Raphael (deceased)
22. HELM AG
23. NICOLE HILIARE, as Personal Representative of the Estate of Harryson Charles Fils (deceased)
24. ALTAGRACE JACKSON, as natural parent and guardian of Rood Schneider Jackson, a minor
25. FENOLD JACKSON, as Personal Representative of the Estate of Bill Jerry Jackson (deceased); and as natural parent and guardian of Rood Schneider Jackson, a minor

26. HABIB JAMIL-ALI, as Personal Representative of the Estate of Shemli Jamil Ali (deceased)

27. EVENS JEAN, as natural parent and guardian of Samir Jean, a minor

28. WISLIN JEAN, as natural parent and guardian of Faika Jean, a minor

29. MARIE CAMEL JEAN-BAPTISTE, as Personal Representative of the Estate of Vandelfric Jean-Baptiste (deceased)

30. GERALD JOACHIM, as Personal Representative of the Estate of Rachelle Joachim (deceased); and as natural parent and guardian of Jamason Joachim, a minor

31. MARIE ROSELENE JOSEPH, as Personal Representative of the Estate of Samuel Davens Joseph (deceased)

32. VILINORD LECLERC, as Personal Representative of the Estate of Walsonord De Kingkino Leclerc (deceased)

33. MARIETTE HILDA LOUIS, as Personal Representative of the Estate of Christy Laure Louis (deceased)

34. WISMANN LUDGER, as Personal Representative of the Estate of Youri Ludger (deceased)

35. DARLYNE MACON, as natural parent and guardian of Oliver Macon, a minor

36. MERSON MACON, as natural parent and guardian of Oliver Macon, a minor

37. FRANTZ MICHEL, as natural parent and guardian of Erwen Michel, a minor

38. JEAN FRANCOIS MIMOSE, as natural parent and guardian of Spady Cadet, a minor

39. EYLSEE MINOUSE, as natural parent and guardian of Jamason Joachim, a minor

40. JEAN ROOSEVELT MONDESIR, as Personal Representative of the Estate of Vladimir Mondesir (deceased)

41. LUCINE MOUSSIGNAC, as Personal Representative of the Estate of Micheline Moussignac (deceased)

42. MARIE MYRTHIL, as Personal Representative of the Estate of Schneilyne Vibert (deceased)

43. ROMANE NORE, as Personal Representative of the Estate of Jemimah Nore (deceased)

44. CELITA PAIJLEUS, as Personal Representative of the Estate of Stephanie Pierre Louis (deceased)

45. MARIE PAYEN, as Personal Representative of the Estate of Pamela Sue Payen (deceased)

46. PIERRE PHILIBERT, as natural parent and guardian of Antonioni Philibert, a minor

47. YVROSE PIERRE-LOUIS, as Personal Representative of the Estate of Jean-Louis Daril Michel (deceased); and natural parent and guardian of Erwen Michel, a minor

48. ASTRIDE RICHARD, as natural parent and guardian of Faika Jean, a minor

49. FRITZ ST. JEAN, as Personal Representative of the Estate of Nico Phillipe Kervens St. Jean (deceased)

50. MARIE ANITHE ST. JEAN, as Personal Representative of the Estate of Cindy Arthelus (deceased)

51. VERDIEU ST. LOUIS, as Personal Representative of the Estate of Farah St. Louis (deceased)

52. MICHEL ST. VAL., as Personal Representative of the Estate of Mirlene St. Val, (deceased)

53. ELVIA SEMERZIER, as Personal Representative of the Estate of Makenson La Fortune (deceased)

54. JEAN TELEMAQUE, as Personal Representative of the Estate of Stanley Telemaque (deceased)

55. VENANTE VILLARSSON, as Personal Representative of the Estate of Mathieu Rocheny (deceased)

56. VOS B.V.

57. LUC ZAMOR, as Personal Representative of the Estate of Pierre Ludenson Zamor (deceased)

58. MASCELIN ZEPHYR, as Personal Representative of the Estate of Daphnee Zephyr (deceased)

NOTATION: There are no parent companies or subsidiary companies other than the two defendant companies to be listed.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

LIST OF PARTIES TO THE PROCEEDING

AND RULE 29 LIST ii

TABLE OF AUTHORITIES xii

STATEMENT OF THE CASE 1

(i) Course of Proceedings 1

(ii) Statement of the Facts 7

SUMMARY OF THE ARGUMENT 11

ARGUMENT 13

i. Limitations of Freely Granting Leave to Amend Under Federal Rule of Civil Procedure 15(a) 13

TABLE OF CONTENTS (cont'd)

Page

ii. Inadequate Basis to Allow Amendment to Include Jurisdictional Allegations under the Alien Tort Claims Act, 28 U.S.C. § 1350 19

iii. Additional Misstatements 23

CONCLUSION 27

TABLE OF AUTHORITIES

Page

Cases:

Cohen v. Hartman,

634 F.2d 318 (5th Cir. 1981) 13

Filartiga v. Pena-Irala,

630 F.2d 876 (2d Cir. 1980) 7, 20

Forman v. Davis,

371 U.S. 78, 83 S. Ct. 227 (1962) 16, 17

Kadic v. Karadzk,

70 F.3d 232 (2d Cir. 1995) 19, 23

Seagraves v. Harris,

629 F.2d 385 (5th Cir. 1980) 15

Other Authorities:

Alien Tort Claims Act, 28 U.S.C. § 1350 . . . . i , 11,19

Fed. R. Civ. P. 12(b) 4

Fed. R. Civ. P. 15(a) 13, 15

STATEMENT OF THE CASE

This is a product liability action arising from the unfortunate deaths and injury of Haitian children which allegedly resulted from their ingestion of anti-fever syrups containing glycerine tainted with diethylene glycol. This case was filed February 27, 1997 against Helm AG ("Helm") and VOS B.V. ("VOS"), middlemen in the distribution of allegedly tainted glycerine, purchased by VOS from other middlemen who had certified it as pharmaceutically pure.

(i) Course of Proceedings

A Complaint was filed on February 27, 1997 on behalf of the representatives of children who allegedly died or were injured as a result of the ingestion of the anti-fever medicine. On July 8, 1997, Plaintiffs amended their Complaint primarily to include additional

Plaintiffs. The Amended Complaint serves as the operative pleading, which the district court dismissed.

The Amended Complaint describes this matter as a "product liability action" and contains allegations relating to Helm's and VOS' conduct in connection with the damages suffered by the Plaintiffs when medicine made with contaminated glycerine was ingested. Plaintiffs allege that Helm and VOS "utilized an inferior method to test the glycerine." They also claim Helm and VOS knew or should have known "that the glycerine was suspect." Additionally, they contend VOS and Helm "had a standard practice" of re-stenciling labels on chemical known as "neutralization" to "protect their business interests." Plaintiffs allege Helm and VOS contacted Metall-Chemie, a chemical trader/broker located in Hamburg, Germany, and placed an order for

72 x 250 K.G. drums of "glycerine min. 98% U.S.P. 21." "Metall-Chemie sent a confirmation of the order to Defendants, Helm and VOS . . ." "Metall-Chemie then contacted a trading company in China (*i.e.* Sinochem) and ordered 72 x 250 K.G. drums of glycerine U.S.P. 21 . . ." Sincochem then sold the 72 drums to Metall-Chemie, which in turn sold the 72 drums to VOS, which then sold the 72 drums to Chemical Trading and Consulting GMBH, which ultimately sold the 72 drums to Pharval, the Haitian manufacturer of the tainted medicine. "Metall-Chemie was provided a certificate of analysis of the glycerine, indicating the product to be 'Glycerine U.S.P. with an assay of 98.36%.'" It should be emphasized, Metall-Chemie sold to VOS and provided VOS with this certification.

In November 1997, Helm and VOS filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b). This Motion raised two arguments for dismissal of the Complaint: (1) lack of subject matter jurisdiction; and (2) lack of personal jurisdiction

In this regard, a status conference was held on January 16, 1998. At this conference, "Plaintiffs asked for leave to amend the Amended Complaint to allege, in addition to diversity jurisdiction, original federal question jurisdiction." "The court denied the request at that time and directed the Plaintiffs to demonstrate the basis for federal question jurisdiction in the response to Defendants' Motion to Dismiss" (emphasis added) in lieu of filing another amended complaint. (The foregoing quotations are taken from Plaintiffs' response to Defendant's motion to dismiss.)

After four motions to extend the time to respond, Plaintiffs finally served their response on April 27, 1998 which addressed original federal question jurisdiction as requested by the court, some five months after the Motion to Dismiss was filed.

After reviewing Plaintiffs' attempts to demonstrate jurisdiction based on federal question, on July 15, 1998 the district court granted the Motion to Dismiss reasoning:

> Under the facts as alleged, the defendants did not manufacture the glycerine, but participated in the chain of destruction [sic] [distribution] of the product. Defendants did not alter the product and were not the seller of the product to

Pharval, the manufacturer of the medicine allegedly consumed by the children.

These allegations do not constitute a violation of the "law of nations." While Plaintiffs point to various resolutions by the World Health Assembly and United Nations concerning consumer protection and substandard pharmaceutical preparation, they point to no violation of international law or treaty. "It is only where the nations of the world have demonstrated the wrong is of mutual and not merely several concern, by means of express international accords, that a wrong generally recognized becomes an international law violation

within the meaning of the statute." *Filartiga v. Pena-Irala*, 630 F.2d 876, 888 (2d Cir. 1980).

It is clear from the District Court's Order, Appendix A in Plaintiff's Petition, the court considered not only the allegations of the Amended Complaint, but also the new claims contained in Plaintiffs' response brief in reaching its decision. The second paragraph above of the court's Order is specifically dedicated to addressing the jurisdictional allegations of Plaintiffs' brief.

(ii) Statement of the Facts

Plaintiffs allege that glycerine, an ingredient used in the manufacture of the anti-fever medicine, was contaminated when the glycerine was placed into the stream of commerce. The glycerine was placed into the

stream of commerce in China by the conduct of a Chinese company, Sinochem. The Amended Complaint alleges the glycerine was originally sold by Sinochem to Metall-Chemie, a middleman which sold it to Helm and VOS. Plaintiffs also claim the glycerine was shipped directly from China to Rotterdam, Netherlands via China Ocean Shipping Co., Vessel 2 Hong He U.12.

Plaintiffs allege Helm and VOS then sold the glycerine to Chemical Trading and Consulting GMBH ("CTC"), a middleman which sold it to Pharval Laboratories, the Haitian pharmaceutical company. The glycerine was shipped directly to the Haitian manufacturer from the Netherlands to Port-au-Prince, Haiti, and arrived at Agences Pehacheve, Pharval's sister company in Haiti. The anti-fever medicine, an over-the-counter remedy made with the glycerine, was sold in

Haiti and ingested by Haitian children in Haiti often at the prescription of Haitian doctors.

The Amended Complaint alleges the certification provided to Metall-Chemie, the seller of the glycerine to VOS and Helm, indicated the product to be "Glycerin U.S.P. with an assay of 98.36%." The certification provided to Metall-Chemie indicated the product to be "Glycerin U.S.P. with an assay of 98.36%." This certification in turn was provided to VOS. The analysis from the laboratory with which VOS contracted, SGS Laboratory Services, did not indicate the presence of diethylene glycol. Indeed, the analysis from the laboratory with which VOS contracted did not find the glycerin to be grossly miscolored as a result of the diethylene glycol content. Plaintiffs' statement to the contrary in their brief at page 1, line 10, is simply

incorrect. In fact, the analysis only showed the glycerine to be "off-hue." But, more important, the analysis was received by VOS after the glycerine had been sold to Mettal-Chemie and shipped. Neither Helm nor VOS knowingly sold and shipped diethylene glycol contaminated glycerine. (VOS sold the glycerine to CTC on February 23, 1995, paragraph 48 of the Amended Complaint. The glycerine was shipped on February 25, 1995, paragraph 50 of the Amended Complaint. The analysis was prepared on March 2, 1995, paragraph 14 of Plaintiffs' response.)

SUMMARY OF THE ARGUMENT

Plaintiffs, in their Amended Complaint, their response to Defendants' motion to dismiss, and their appellate brief have failed to show a basis for federal question jurisdiction under the Alien Tort Claims Act, 28 U.S.C. § 1350. Plaintiffs were given ample opportunity to demonstrate this to the lower courts, but failed to do so. Therefore, the district court and appellate court, properly concluded any such amendment to the Plaintiffs' pleadings would be a futile act.

From the very facts alleged by Plaintiffs, Helm and VOS were merely middlemen in the chain of distribution of the glycerine which is at the heart of this matter. Defendants neither manufactured nor altered the glycerine nor did they sell it to the pharmaceutical manufacturer or the end users. Nor was it known by

Helm and VOS at the time it was sold and shipped it was contaminated. HELM's and VOS' actions do not constitute a violation of the law of nations, as the two courts below have previously determined.

ARGUMENT

i. Limitations of Freely Granting Leave to Amendment Under Federal Rule of Civil Procedure 15(a).

Rather than require Plaintiffs to file a second amended complaint, the district court allowed Plaintiffs to present additional information in their responsive brief to the motion to dismiss relative to federal question jurisdiction. That notwithstanding, and after assessing Plaintiffs' jurisdictional argument, in total, the district court found:

> These allegations do not constitute a violation of the law of nations. *See Cohen v. Hartman, supra* [634 F.2d 318 (5th Cir. 1981)]. While Plaintiffs point to various resolutions by the World Health Assembly

> and United Nations concerning consumer protection and substandard pharmaceutical preparation, they point to no violation of international law or treaty.

The district court allowed Plaintiffs an opportunity to demonstrate federal question jurisdiction as an alternative basis for jurisdiction. After doing so, the court rightfully concluded federal question jurisdiction, based on allegations taken from Plaintiffs' Amended Complaint and Plaintiffs' responsive brief, did not apply. The Plaintiffs likewise failed to provide a viable argument supporting federal question jurisdiction in their initial appellate brief. And here, before this Court, they have supplied nothing new by way of argument or fact, not already provided to the district court or appellate

court. Plaintiffs still cannot present sufficient facts in support of their claim which would entitle them to relief.

In their appellate brief Plaintiffs cited certain supporting authorities. Specifically, they noted the Fifth Circuit's holding that "dismissal for want of jurisdiction is generally not favored when an alternative basis for jurisdiction exists." (citing *Seagraves v. Harris,* 629 F.2d 385, 390 (5th Cir. 1980) (emphasis added)). The language cited in the *Seagraves* decision, conspicuously absent in their petition for writ, underscores the justified basis upon which the district court dismissed the Amended Complaint. Simply stated, after a review of the Amended Complaint and Plaintiffs' brief, no alternative basis for subject matter jurisdiction exists.

Although Plaintiffs correctly state Federal Rule of Civil Procedure 15(a) states that leave to amend should

be given freely when justice so requires, this broad principle is not without court-interpreted limitations.

The Plaintiffs rely upon *Forman v. Davis*, 371 U.S. 78, 83 S. Ct. 227, 230 (1962). But in so doing, they fail to acknowledge this Court's holding that, "futility of amendment" is an apparent reason for which a court may properly refuse to allow amendment. As the court stated there:

> In the absence of any appearance or declared reason–such as undue delay, . . . futility of amendment, etc.–the relief sought should, as the rules require, be "freely given."

Futility of amendment is an issue now squarely before this Court. The district court allowed Plaintiffs an opportunity to disclose the basis for federal question

jurisdiction. The court then found that disclosure unpersuasive and determined amendment would be futile. It thus reasonably denied Plaintiffs' motion to amend and provided justifying reason in its order which was within the court's discretion. As stated in *Forman, supra*:

> Of course, the grant or denial of an opportunity to amend is within the discretion of the district court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion.

Further, Plaintiffs claim error by the district court. Specifically, they again allege the district court "went far beyond its task by . . . basing its decision only upon the allegations of the Amended Complaint, which

Plaintiffs sought to amend." (*See* Plaintiffs' Petition at p. 19).

Plaintiffs are far less than accurate in their position. The district court did not base its decision only upon the allegations of the Amended Complaint. It is patent from its order that the district court considered the disclosure Plaintiffs made in their responsive brief; a disclosure solicited by the trial court in lieu of an amended complaint. To state the court came to its decision "in reliance upon only the allegations of the Amended Complaint" is inaccurate.

ii. Inadequate Basis to Allow Amendment to Include Jurisdictional Allegations under the Alien Tort Claims Act, 28 U.S.C. § 1350.

The Alien Tort Claims Act provides that, "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." 28 U.S.C. § 1350. The Act confers federal subject matter jurisdiction upon the establishment of three enumerated conditions: (1) an alien sues; (2) for a tort; (3) committed in violation of the law of nations. *Kadic v. Karadzk,* 70 F.3d 232, 238 (2d Cir. 1995).

In *Kadic,* the court went on to further state,

> [I]t is not a sufficient basis for jurisdiction to plead merely a colorable violation of

law of nations. There is no federal subject matter jurisdiction under the Alien Tort Act unless the complaint adequately pleads a violation of the law of nations (or treaty of the United States).

The issue before the Court and which is fundamental to Petitioners' argument, is whether the actions of Helm and VOS, as alleged in the Amended Complaint and Plaintiffs' responsive brief, constitute a violation of the law of nations.

Plaintiffs' refer to *Filartiga,* 630 F.2d at 876, a case where the act violative of the law of nations was official torture. Plaintiffs state "The law of nations is involved where the nations of the world have demonstrated that the wrong is a mutual, and not merely several concern." *Id.* at 887. Placing this in context

(and correcting for the page number), the Second Circuit actually wrote:

> In IIT, Judge Friendly astutely noted that the mere fact that every nation's municipal law may prohibit theft does not incorporate "the Eighth Commandment Thou shalt not steal into the law of nations." It is only where the nations of the world have demonstrated that the wrong is a mutual, and not merely several concern by means of expressed international accords that a wrong generally recognized becomes an international law violation within the meaning of the statute. *Id.* at 888 (emphasis added).

While Plaintiffs point to various resolutions by the World Health Assembly and United Nations concerning consumer protection and substandard pharmaceutical preparation, no violation of international law or treaty is shown, as required. Helm's and VOS' alleged actions do not violate the law of nations when VOS only acted as a middleman in the chain of distribution of an allegedly defective product. Plaintiffs' do not point to and cannot cite any factually similar case in which any court permitted a claim to proceed under the Alien Tort Claims Act based on a violation of the law of nations, because none exist. Those decisions involving individuals or private parties where jurisdiction based on the Alien Tort Act was found involved piracy, slave trade, war crimes and genocide. Crimes such as torture and summary execution, where

not perpetrated in the course of genocide or war crimes, in order to be a violation of the law of nations must be committed by state officials or under color of law. *Kadic, supra.* Beyond any legitimate dispute, the alleged actions of Helm and VOS do not rise to the level of such conduct.

In sum, though Plaintiffs aver they are "prepared to allege that Defendants violated the law of nations," they cannot "adequately" plead a violation of the law of nations.

iii. Additional Misstatements

At the outset of the petition, in the Question Presented for Review, Plaintiffs characterize the Defendants as ". . . providers of lethal pharmaceutical products, who knew the products to be tainted." This statement is, at best, misleading. While Defendants may

know today the glycerine was contaminated with diethylene glycol when it was used in the manufacture of the fever medicine, Defendants did not know that at the time it was sold by them and shipped. Plaintiffs make no jurisdictional allegations to the contrary. This is clear from Plaintiffs' Amended Complaint and from all of the briefs prepared by them to date. Plaintiffs have attempted to mislead the court by innuendo. This is objectionable.

Plaintiffs employ this tactic again at page two of the Petition where they state Defendants ". . . knowingly provided the lethal component of the anti-fever syrup . . ." While it is true Plaintiffs claim Defendants knowingly provided the glycerine, nowhere is it alleged in the jurisdictional allegations Defendants knew it was

contaminated with diethylene glycol when it was allegedly provided.

Early in the Petition, Plaintiffs highlight an argument made by Defendants concerning limiting review of the district court solely to that which was presented in the Amended Complaint. This is nothing but an attempt by Plaintiffs at misdirection. It is obvious this argument was not embraced by the court and did not enter into its decision. Though Defendants' argument was directed to jurisdictional issues, it was in large part directed to scandalous accusations and irrelevant material raised in Plaintiffs' responsive brief concerning Defendants' past business history. Plaintiffs again have raised these in their Petition.

As to this, Defendants vehemently deny the reprehensible conduct of which they are accused and

object to the inclusion of such accusations clearly not germane to the issues at hand. Such tactics can only be designed as an attempt to cause prejudice and distract this Court from the real issues to be resolved.

Plaintiffs know that because of constraints imposed here, Defendants in refutation of such scandalous and impertinent accusations may only state the truth is not as it is claimed. And, in this regard, Defendants submit that even assuming all of Plaintiffs' allegations to be true, federal jurisdiction would still not lie.

Plaintiffs in their List of All Parties to Proceeding include Helm US Chemical Corporation, Helm New York Chemical Corporation, Helm Fertilizer, Helena Terminal, Helm Fertilizer Corporation, and Helm

Fertilizer, Inc. These entities are not parties to the proceeding. Defendants object to their inclusion.

CONCLUSION

Plaintiffs demonstrate no basis upon which to establish federal question jurisdiction in this case. Any pleading amendment that Plaintiffs may have attempted concerning the Alien Tort Claims Act would have been a "useless act" because the statute simply does not apply.

In support of their position that a jurisdictional basis exists in the Alien Tort Claims Act, Plaintiffs point to resolutions passed by the World Health Assembly and United Nations as legally binding. This is misleading. Plaintiffs can produce no evidence to establish a violation of international law or treaty as required by the Alien Tort Claims Act. The district court, in its Order granting Helm's and VOS' Motion to Dismiss, may have expressed it best when it stated,

> Plaintiffs through their counsel describe the defendants as "an enemy of all mankind" and argue that what they previously called a product liability action is actuality genocide . . . While plaintiffs' counsels' emotions may be understandable, the allegations of this case, if true, do not show an 'intent to destroy, in whole or in part, a national, ethnical, racial or religious group.'"

Clearly, the district court's and the appellate court's decisions must be affirmed.